



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB4682

by Rep. Karen A. Yarbrough

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Debt Management Service Act and renames the Act to the Debt Relief and Consumer Protection Act, including all cross-references in various other Acts. Changes the requirements for a license to include someone who operates a debt relief service (instead of debt management service). Changes the requirements concerning the (1) application for, (2) qualification for, (3) examination of, (4) renewal of, (5) fees for, and (6) revocation or suspension of a license from the Department of Financial and Professional Regulation. Changes provisions concerning the display and location of a license. Adds provisions concerning a written debt relief agreement between a debtor and licensee. Adds (1) disclosure requirements, (2) required terms, (3) accounting, and (4) the debtor's right to cancel with respect to debt relief services. Changes provisions concerning prohibited actions by a licensee. Adds provisions concerning the advertisement and solicitation of debt relief services. Requires the Department to post an annual report concerning debt relief agencies. Makes other changes. Effective immediately.

LRB096 15555 MJR 30786 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning financial regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The State Finance Act is amended by changing  
5 Section 6z-26 as follows:

6 (30 ILCS 105/6z-26)

7 Sec. 6z-26. The Financial Institution Fund. All moneys  
8 received by the Department of Financial and Professional  
9 Regulation under the Safety Deposit License Act, the Foreign  
10 Exchange License Act, the Pawnors Societies Act, the Sale of  
11 Exchange Act, the Currency Exchange Act, the Sales Finance  
12 Agency Act, the Debt Relief and Consumer Protection ~~Management~~  
13 ~~Service~~ Act, the Consumer Installment Loan Act, the Illinois  
14 Development Credit Corporation Act, the Title Insurance Act,  
15 and any other Act administered by the Department of Financial  
16 and Professional Regulation as the successor of the Department  
17 of Financial Institutions now or in the future (unless an Act  
18 specifically provides otherwise) shall be deposited in the  
19 Financial Institution Fund (hereinafter "Fund"), a special  
20 fund that is hereby created in the State Treasury.

21 Moneys in the Fund shall be used by the Department, subject  
22 to appropriation, for expenses incurred in administering the  
23 above named and referenced Acts.

1           The Comptroller and the State Treasurer shall transfer from  
2 the General Revenue Fund to the Fund any monies received by the  
3 Department after June 30, 1993, under any of the above named  
4 and referenced Acts that have been deposited in the General  
5 Revenue Fund.

6           As soon as possible after the end of each calendar year,  
7 the Comptroller shall compare the balance in the Fund at the  
8 end of the calendar year with the amount appropriated from the  
9 Fund for the fiscal year beginning on July 1 of that calendar  
10 year. If the balance in the Fund exceeds the amount  
11 appropriated, the Comptroller and the State Treasurer shall  
12 transfer from the Fund to the General Revenue Fund an amount  
13 equal to the difference between the balance in the Fund and the  
14 amount appropriated.

15           Nothing in this Section shall be construed to prohibit  
16 appropriations from the General Revenue Fund for expenses  
17 incurred in the administration of the above named and  
18 referenced Acts.

19           Moneys in the Fund may be transferred to the Professions  
20 Indirect Cost Fund, as authorized under Section 2105-300 of the  
21 Department of Professional Regulation Law of the Civil  
22 Administrative Code of Illinois.

23           (Source: P.A. 94-91, eff. 7-1-05.)

24           Section 10. The Debt Management Service Act is amended by  
25 changing the title of the Act and Sections 1, 2, 3, 4, 5, 6, 7,

1 10, 11, 11.5, 12, 12.1, 13, 14, 15, 15.1, 15.3, 16, 17, 20.5,  
2 and 22 and by adding Sections 10.1, 10.2, 10.3, 10.4, 13.2,  
3 13.3, and 13.8 as follows:

4 (205 ILCS 665/Act title)

5 An Act in relation to the regulation, licensing, and  
6 bonding of persons engaged in rendering debt relief ~~management~~  
7 services to individuals by receiving funds from individuals and  
8 managing and distributing the same to the creditors thereof.

9 (205 ILCS 665/1) (from Ch. 17, par. 5301)

10 Sec. 1. Declaration of policy. The business of providing  
11 debt relief ~~management~~ services to individuals is a matter of  
12 public interest and concern and is subject to regulation and  
13 control in the public interest.

14 (Source: P.A. 90-545, eff. 1-1-98.)

15 (205 ILCS 665/2) (from Ch. 17, par. 5302)

16 Sec. 2. Definitions. As used in this Act:

17 "Debt relief ~~management~~ service" means any of the  
18 following: (1) the planning and management of the financial  
19 affairs of a debtor for the purposes of addressing debt; (2) a  
20 ~~fee and~~ the receiving of money from the debtor for the purpose  
21 of distributing it, directly or indirectly, to the debtor's  
22 creditors in payment or partial payment of the debtor's  
23 obligations or soliciting financial contributions from

1 creditors; and (3) any service representing, directly or by  
2 implication, to renegotiate, settle, or in any way alter or  
3 seek to alter the terms of payment or other terms of the debt  
4 between a consumer and one or more unsecured creditors or debt  
5 collectors to an unsecured creditor or debt collector. "Debt  
6 relief service" includes the activities of debt settlement,  
7 credit counseling, debt management, and debt consolidation.  
8 The business of providing debt relief ~~management~~ is conducted  
9 in this State if the debt relief ~~management~~ business, its  
10 employees, or its agents are located in this State or if the  
11 debt relief ~~management~~ business solicits or contracts with  
12 debtors located in this State.

13 "Debt settlement" means any one or more of the following  
14 activities:

15 (1) Offering to provide advice, or offering to act or  
16 acting as an intermediary between a debtor and one or more  
17 of the debtor's creditors, where the primary purpose of the  
18 advice or action is to obtain a settlement for less than  
19 the full amount of debt, whether in principal, interest,  
20 fees, or other charges, incurred primarily for personal,  
21 family, or household purposes, including, but not limited  
22 to, offering debt negotiation, debt reduction, or debt  
23 relief services.

24 (2) Advising, encouraging, assisting, or counseling a  
25 debtor to accumulate funds in an account for future payment  
26 of a reduced amount of debt to one or more of the debtor's

1 creditors.

2 Any person so engaged or holding out as so engaged is  
3 deemed to be engaged in the provision of debt settlement  
4 services, regardless of whether or not a fee is charged for  
5 such services.

6 The terms "debt relief service" and "debt settlement" ~~This~~  
7 ~~term~~ shall not include the following when engaged in the  
8 regular course of their respective businesses and professions:

9 (a) Attorneys at law.

10 (b) Banks, fiduciaries, credit unions, savings and  
11 loan associations, and savings banks as duly authorized and  
12 admitted to transact business in the State of Illinois and  
13 performing credit and financial adjusting service in the  
14 regular course of their principal business.

15 (c) Title insurers and abstract companies, while doing  
16 an escrow business.

17 (d) Judicial officers or others acting pursuant to  
18 court order.

19 (e) Employers for their employees.

20 (f) Bill payment services, as defined in the  
21 Transmitters of Money Act.

22 "Creditor" means any party:

23 (1) named by the debtor as a creditor in the debt  
24 relief plan or debt relief agreement;

25 (2) that acquires or holds the debt; or

26 (3) to whom interactions with the debt relief agency is

1 assigned in relation to the debt listed in the debt relief  
2 plan or the debt relief agreement.

3 "Debt relief agreement" means the written contract between  
4 the debt relief agency (licensee) and the debtor.

5 "Debt relief plan" means the debtor's individualized  
6 package of debt relief services set forth in the debt relief  
7 agreement.

8 "Director" means Director of the Division of Financial  
9 Institutions of the Department of Financial and Professional  
10 Regulation.

11 "Debtor" means the person or persons for whom the debt  
12 relief management service is performed.

13 "Person" means an individual, firm, partnership,  
14 association, limited liability company, corporation, or  
15 not-for-profit corporation.

16 "Lead generator" means a person that, without providing  
17 debt relief services:

18 (1) solicits debtors to engage in debt relief through  
19 mail, in person, through electronic web-based  
20 solicitation, or through any other means;

21 (2) acts as an intermediary or referral agent between a  
22 debtor and an entity actually providing debt relief  
23 services; or

24 (3) obtains a debtor's personally identifiable  
25 information and transmits that information to a debt relief  
26 company.

1 "Licensee" means a person or business or entity licensed  
2 under this Act.

3 (Source: P.A. 95-331, eff. 8-21-07.)

4 (205 ILCS 665/3) (from Ch. 17, par. 5303)

5 Sec. 3. Requirement of license. It shall be unlawful for  
6 any person to operate a debt relief ~~management~~ service or  
7 engage in that business as herein defined except as authorized  
8 by this Act and without first having obtained a license as  
9 hereinafter provided.

10 (Source: P.A. 90-545, eff. 1-1-98.)

11 (205 ILCS 665/4) (from Ch. 17, par. 5304)

12 Sec. 4. Application for license. Application for a license  
13 to engage in the debt relief ~~management~~ service business in  
14 this State shall be made to the Director and shall be in  
15 writing, under oath, and in the form prescribed by the  
16 Director. The form of this application shall be determined and  
17 provided for by administrative rule by the Director. The  
18 application shall require that the applicant identify the form  
19 of business practice used to help consumers.

20 Each applicant, at the time of making such application,  
21 shall pay to the Director the sum of \$30.00 as a fee for  
22 investigation of the applicant, and the additional sum of  
23 \$100.00 as a license fee.

24 Every applicant shall submit to the Director, at the time

1 of the application for a license, a bond to be approved by the  
2 Director in which the applicant shall be the obligor, in the  
3 sum of \$25,000 or such additional amount as required by the  
4 Director based on the amount of disbursements made by the  
5 licensee in the previous year, and in which an insurance  
6 company, which is duly authorized by the State of Illinois, to  
7 transact the business of fidelity and surety insurance shall be  
8 a surety. Those applicants intending to engage in services  
9 defined as "debt settlement" in this Act shall submit to the  
10 Director, at the time of the application for a license, a bond  
11 to be approved by the Director in which the application shall  
12 be the obligor in the sum of \$75,000, or such additional amount  
13 as required by the Director based on the amount of  
14 disbursements made by the licensee in the previous year, and in  
15 which an insurance company, which is duly authorized by the  
16 State of Illinois, to transact the business of fidelity and  
17 surety insurance shall be a surety.

18 The bond shall run to the Director for the use of the  
19 Department of Financial and Professional Regulation or of any  
20 person or persons who may have a cause of action against the  
21 obligor in said bond arising out of any violation of this Act  
22 or rules by a license. Such bond shall be conditioned that the  
23 obligor will faithfully conform to and abide by the provisions  
24 of this Act and of all rules, regulations and directions  
25 lawfully made by the Director and will pay to the Director or  
26 to any person or persons any and all money that may become due

1 or owing to the State or to such person or persons, from said  
2 obligor under and by virtue of the provisions of this Act.

3 (Source: P.A. 92-400, eff. 1-1-02.)

4 (205 ILCS 665/5) (from Ch. 17, par. 5305)

5 Sec. 5. Qualifications for license. Upon the filing of the  
6 application and the approval of the bond and the payment of the  
7 specified fees, the Director shall issue a license if he finds:

8 (1) That the financial responsibility, experience,  
9 character and general fitness of the applicant, the managers  
10 thereof, if the applicant is a limited liability company, the  
11 partners thereof, if the applicant is a partnership, and of the  
12 officers and directors thereof, if the applicant is a  
13 corporation or a not-for-profit corporation, are such as to  
14 command the confidence of the community and to warrant belief  
15 that the business will be operated fairly, honestly and  
16 efficiently within the purposes of this Act, and

17 (2) That the applicant, if an individual, the managers  
18 thereof, if the applicant is a limited liability company, the  
19 partners thereof, if the applicant is a partnership, and the  
20 officers and directors thereof, if the applicant is a  
21 corporation, have not been convicted of a felony or a  
22 misdemeanor involving dishonesty or untrustworthiness, and

23 (3) That the person or persons have not had a record of  
24 having defaulted in the payment of money collected for others,  
25 including the discharge of such debts through bankruptcy

1 proceedings, and

2 (4) The applicant, or any officers, directors, partners or  
3 managers, have not previously violated any provision of this  
4 Act or any rule lawfully made by the Director, and

5 (5) The applicant has not made any false statement or  
6 representation to the Director in applying for a license  
7 hereunder.

8 The Director shall deliver a license to the applicant to  
9 engage in the debt relief ~~management~~ service business in  
10 accordance with the provisions of this Act at the location  
11 specified in the said application, which license shall remain  
12 in full force and effect until it is surrendered by the  
13 licensee or revoked by the Director as herein provided;  
14 provided, however, that each license shall expire by the terms  
15 thereof on January 1 next following the issuance thereof unless  
16 the same be renewed as hereinafter provided. A license,  
17 however, may not be surrendered without the approval of the  
18 Director.

19 More than one license may be issued to the same person for  
20 separate places of business, but separate applications shall be  
21 made for each place of business.

22 (Source: P.A. 90-545, eff. 1-1-98.)

23 (205 ILCS 665/6) (from Ch. 17, par. 5306)

24 Sec. 6. Renewal of license. Each licensee under the  
25 provisions of this Act may make application to the Director for

1 renewal of its license, which application for renewal shall be  
2 on the form prescribed by the Director and shall be accompanied  
3 by a fee of \$100.00 together with a bond or other surety as  
4 required, in a minimum amount of \$25,000 or \$75,000, whichever  
5 sum is required by Section 4 of this Act, or such an amount as  
6 required by the Director based on the amount of disbursements  
7 made by the licensee in the previous year. The application must  
8 be received by the Department no later than December 1 of the  
9 year preceding the year for which the application applies.

10 (Source: P.A. 92-400, eff. 1-1-02.)

11 (205 ILCS 665/7) (from Ch. 17, par. 5307)

12 Sec. 7. License, display and location. Each license issued  
13 shall be kept conspicuously posted in the place of business of  
14 the licensee. The business location may be changed by any  
15 licensee upon 10 days prior written notice to the Director. A  
16 copy of the license shall also be available via any website  
17 operated by the licensee and designed for the purposes of  
18 marketing to new and potential clients. A license must operate  
19 under the name as stated in its original application.

20 (Source: P.A. 90-545, eff. 1-1-98.)

21 (205 ILCS 665/10) (from Ch. 17, par. 5310)

22 Sec. 10. Revocation or suspension of license.

23 (a) The Director may revoke or suspend any license if he  
24 finds that:

1           (1) any licensee has failed to pay the annual license  
2 fee, or to maintain in effect the bond required under the  
3 provisions of this Act;

4           (2) the licensee has violated any provisions of this  
5 Act or any rule, lawfully made by the Director within the  
6 authority of this Act;

7           (3) any fact or condition exists which, if it had  
8 existed at the time of the original application for a  
9 license, would have warranted the Director in refusing its  
10 issuance; or

11           (4) any applicant has made any false statement or  
12 representation to the Director in applying for a license  
13 hereunder or in its application for renewal of a license.

14           (b) In every case in which a license is suspended or  
15 revoked or an application for a license or renewal of a license  
16 is denied, the Director shall serve notice of his action,  
17 including a statement of the reasons for his actions, either  
18 personally or by certified mail, return receipt requested.  
19 Service by mail shall be deemed completed if the notice is  
20 deposited in the U.S. Mail.

21           (c) In the case of a denial of an application or renewal of  
22 a license, the applicant or licensee may request in writing,  
23 within 30 days after the date of service, a hearing. In the  
24 case of a denial of a renewal of a license, the license shall  
25 be deemed to continue in force until 30 days after the service  
26 of the notice of denial, or if a hearing is requested during

1 that period, until a final administrative order is entered.

2 (d) An order of revocation or suspension of a license shall  
3 take effect upon service of the order unless the licensee  
4 requests, in writing, within 10 days after the date of service,  
5 a hearing. In the event a hearing is requested, the order shall  
6 be stayed until a final administrative order is entered. A  
7 licensee whose license is suspended or revoked must inform all  
8 debtors with a debt relief agreement signed by the debtor and  
9 the licensee within 10 business days after the event of  
10 suspension or revocation.

11 (e) If the licensee requests a hearing, the Director shall  
12 schedule the hearing within 30 days after the request for a  
13 hearing unless otherwise agreed to by the parties.

14 (f) The hearing shall be held at the time and place  
15 designated by the Director. The Director and any administrative  
16 law judge designated by him have the power to administer oaths  
17 and affirmations, subpoena witnesses and compel their  
18 attendance, take evidence, and require the production of books,  
19 papers, correspondence, and other records or information that  
20 he considers relevant or material to the injury.

21 (g) The costs for the administrative hearing shall be set  
22 by rule.

23 (h) The Director shall have the authority to prescribe  
24 rules for the administration of this Section.

25 (Source: P.A. 90-545, eff. 1-1-98.)

1 (205 ILCS 665/10.1 new)

2 Sec. 10.1. Written debt relief agreement.

3 (a) A debt relief services provider shall not perform, or  
4 impose any charges or receive any payment for, any debt relief  
5 services until the licensee and the debtor have executed a  
6 written debt relief agreement that contains all terms of the  
7 agreement between the licensee and the debtor, and the licensee  
8 complies with all applicable requirements of this Act.

9 (b) A debt relief agreement must:

10 (1) be in writing, dated, and signed by the licensee  
11 and the debtor;

12 (2) conspicuously indicate whether or not the licensee  
13 is licensed by the Department of Financial and Professional  
14 Regulation; and

15 (3) be written in the debtor's primary language if the  
16 licensee advertises in that language.

17 (c) The licensee must furnish the debtor with a copy of the  
18 signed contract upon execution.

19 (d) No licensee may provide debt relief services for a  
20 debtor or execute a debt relief services agreement unless the  
21 licensee has first:

22 (1) prepared in writing and provided to the debtor, in  
23 a form the debtor may keep, an individualized financial  
24 analysis of the debtor's financial circumstances,  
25 including income and liabilities, and made a determination  
26 supported by the individualized financial analysis that:

1           (A) the debt relief plan proposed for addressing  
2           the debt is suitable for the individual debtor;

3           (B) the debtor can reasonably meet the  
4           requirements of the proposed debt relief plan; and

5           (C) based on the totality of the circumstances,  
6           there is a net tangible benefit to the debtor of  
7           entering into the proposed debt relief plan; and

8           (2) provided, on a document separate from any other  
9           document, the total amount and an itemization of fees,  
10           including any origination fees, monthly fees, and  
11           settlement fees reasonably anticipated to be paid by the  
12           debtor over the term of the agreement.

13           (e) Before executing a debt relief agreement or providing  
14           any services, a licensee must make a determination, supported  
15           by sufficient bases, which creditors listed by the debtor are  
16           reasonably likely, and which are not reasonably likely, to  
17           participate in the debt relief plan set forth in the debt  
18           relief agreement.

19           (f) A licensee has a defense against a claim that no  
20           sufficient basis existed to make a determination that a  
21           creditor was likely to participate if the licensee can produce  
22           either of the following:

23           (1) written confirmation from the creditor that, at the  
24           time the determination was made, the creditor and the  
25           licensee were engaged in negotiations to settle a debt for  
26           another debtor; or

1           (2) evidence that the licensee and the creditor had  
2           entered into a settlement of a debt for another debtor  
3           within the 6 months prior to the date of the determination.

4           (g) The licensee must notify the debtor within 3 business  
5           days after receiving the debtor's list of creditors of the  
6           licensee's determination of the likelihood of participation or  
7           nonparticipation of all the creditors listed for inclusion in  
8           the debt relief agreement or the debt relief plan. The  
9           notification shall be done by oral communication, with written  
10           and electronic confirmation following. If not all creditors  
11           listed in the agreement are reasonably likely to participate in  
12           the debt relief plan, then the licensee must obtain the written  
13           authorization from the debtor to proceed with the debt relief  
14           agreement without the likely participation of all listed  
15           creditors.

16           (205 ILCS 665/10.2 new)

17           Sec. 10.2. Disclosures.

18           (a) Before entering into a contract with a debtor, a  
19           licensee must provide the disclosures as required by this  
20           Section.

21           (b) A person offering to provide or providing debt relief  
22           services must disclose both orally and in writing whether or  
23           not the person is licensed by the Department of Financial and  
24           Professional Regulation and any license number.

25           (c) No person or licensee may provide those services

1 defined as debt settlement under this Act unless the debtor has  
2 acknowledged and signed a single sheet of paper, separate from  
3 any other document or writing, where the following verbatim  
4 notice is provided:

5 WARNING

6 We CANNOT GUARANTEE that you will successfully reduce or  
7 eliminate your debt. Debt settlement is not appropriate for all  
8 debtors.

9 If you stop paying your creditors, there is a strong  
10 likelihood some or all of the following may happen:

11 YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.

12 YOU MAY STILL BE CONTACTED BY CREDITORS.

13 YOU MAY STILL BE SUED BY CREDITORS FOR ALL THE MONEY

14 YOU OWE.

15 FEES, INTEREST, AND OTHER CHARGES WILL CONTINUE TO  
16 MOUNT UP DURING THE (INSERT NUMBER) MONTHS THIS PLAN IS IN  
17 EFFECT.

18 Even if we do settle your debt, YOU MAY STILL HAVE TO PAY  
19 TAXES on the amount forgiven.

20 Your credit rating may be adversely affected.

21 (c) The heading, "WARNING", must be in bold, underlined,  
22 28-point type, and the remaining text must be in 14-point type,  
23 with a double space between each statement.

24 (d) The disclosures and notices required under this Section  
25 must be provided in the debtor's primary language if the debt  
26 settlement services provider advertises in that language.

1       (e) These disclosures shall also be displayed in a  
2 conspicuous location on the licensee's website, if any, and in  
3 any emails to debtors or in advertisements.

4           (205 ILCS 665/10.3 new)

5       Sec. 10.3. Required terms in debt relief agreements.

6       (a) Each debt relief agreement must contain on the front  
7 page of the agreement, segregated by bold lines from all other  
8 information on the page and disclosed prominently and clearly  
9 in bold print, the total amount and itemization of fees,  
10 including any origination fees, monthly fees, and settlement  
11 fees reasonably anticipated to be paid by the debtor over the  
12 term of the agreement.

13       (b) Each debt relief agreement must also contain the  
14 following:

15           (1) a prominent statement describing the terms upon  
16 which the debtor may cancel the contract, as set forth in  
17 Section 10.4 of this Act;

18           (2) a detailed description of all services to be  
19 performed by the licensee for the provider;

20           (3) the licensee's refund policy;

21           (4) the licensee's principal business address, which  
22 must not be a post office box, and the name and address of  
23 its agent in Illinois authorized to receive service of  
24 process; and

25           (5) the name of each creditor the debtor has listed and

1       the aggregate debt owed to each creditor that will be the  
2       subject of the debt relief plan.

3           (205 ILCS 665/10.4 new)

4       Sec. 10.4. Right to cancel.

5       (a) A debtor has the right to cancel a debt relief  
6       agreement without cause at any time upon 10 days' written  
7       notice to the licensee. If the written notice of cancellation  
8       is received by the licensee within 90 days after entering into  
9       the debt relief agreement, then the licensee shall return all  
10       fees and moneys paid to date by the debtor within 10 days after  
11       receiving the written notice. The debtor will sign an  
12       acknowledgement that all funds paid were received by the  
13       debtor. The acknowledgement must be dated.

14       (b) In the event of cancellation, the licensee must, within  
15       10 days after cancellation, notify in writing the debtor's  
16       creditors with whom the licensee is or has been, under the  
17       terms of the debt relief agreement, in communication, of the  
18       cancellation.

19       (c) Upon cancellation, the licensee must cease collection  
20       of any monthly fees beginning in the calendar month following  
21       cancellation.

22       (d) A contract for debt relief services must contain on its  
23       face, in an easily readable type immediately adjacent to the  
24       space for signature by the debtor, the following notice: "Right  
25       to Cancel: You have the right to cancel this contract at any

1 time on 10 days' written notice.".

2 (e) Upon the payment of all debts and fees listed out on  
3 the face of the debt relief agreement, the debt relief  
4 agreement must automatically terminate, and all funds held by  
5 the licensee that exceed the amount of the fees allowed under  
6 Section 12 of this Act must immediately be returned to the  
7 debtor.

8 (f) A licensee may cancel a debt relief agreement with good  
9 cause upon 30 days' written notice to the debtor. Within 10  
10 days after the cancellation, the licensee must notify in  
11 writing the debtor's creditors with whom the licensee is or has  
12 been, under the terms of the debt relief agreement, in  
13 communication, of the cancellation. Upon cancellation, the  
14 licensee must cease collection of any monthly fees beginning in  
15 the month following cancellation. If such cancellation occurs  
16 within 90 days after entering into the debt relief agreement,  
17 the licensee shall return all fees and moneys paid to date by  
18 the debtor.

19 (205 ILCS 665/11) (from Ch. 17, par. 5311)

20 Sec. 11. Contracts, books, and records ~~and contract~~  
21 ~~cancellation~~. Each licensee shall furnish to the Director, when  
22 requested, a copy of the debt relief agreement ~~contract~~ entered  
23 into between the licensee and the debtor. ~~The licensee shall~~  
24 ~~furnish the debtor with a copy of the written contract, at the~~  
25 ~~time of execution, which shall set forth the charges, if any,~~

1 ~~agreed upon for the services of the licensee.~~

2 Each licensee shall maintain records and accounts which  
3 will enable any debtor contracting with the licensee, at any  
4 reasonable time, to ascertain the amounts paid to creditors of  
5 the debtor. The records shall be furnished to the Director if  
6 requested ~~A statement showing the total amount received and the~~  
7 ~~total disbursements to each creditor shall be furnished by the~~  
8 ~~licensee to any individual within seven days of a request~~  
9 ~~therefor by the said debtor.~~ Each licensee shall issue a  
10 receipt for each payment made by the debtor at a licensee's  
11 office. Each licensee shall prepare and retain in the file of  
12 each debtor a written analysis of debtor's income and expenses  
13 to substantiate that the plan of payment is feasible and  
14 practical.

15 (Source: P.A. 90-545, eff. 1-1-98.)

16 (205 ILCS 665/11.5)

17 Sec. 11.5. Examination of licensee. The Director at any  
18 time, either in person or through an appointed representative,  
19 may examine the condition and affairs of a licensee. In  
20 connection with any examination, the Director may examine on  
21 oath any licensee and any director, officer, employee,  
22 customer, manager, partner, member, creditor or stockholder of  
23 a licensee concerning the affairs and business of the licensee.  
24 The Director shall ascertain whether the licensee transacts its  
25 business in the manner prescribed by law and the rules issued

1 thereunder. The licensee shall pay the cost of the examination  
2 as determined by the Director by administrative rule. Failure  
3 to pay the examination fee within 30 days after receipt of  
4 demand from the Director may result in the suspension of the  
5 license until the fee is paid. The Director shall have the  
6 right to investigate and examine any person, whether licensed  
7 or not, who is engaged in the debt relief ~~management~~ service  
8 business. The Director shall have the power to subpoena the  
9 production of any books and records pertinent to any  
10 investigation.

11 (Source: P.A. 90-545, eff. 1-1-98.)

12 (205 ILCS 665/12) (from Ch. 17, par. 5312)

13 Sec. 12. Fees and charges of licensees. A licensee may only  
14 charge a debtor a total fee that shall not exceed 35% of the  
15 debt the licensee saved for the consumer. In any event, a ~~A~~  
16 licensee may not charge a debtor any fees or penalties except  
17 the following:

18 (1) an initial counseling fee not to exceed \$50 per debtor  
19 counseled, provided the average initial counseling fee does not  
20 exceed \$30 per debtor for all debtors counseled; and

21 (2) additional fees at the completion of the initial  
22 counseling services which shall not exceed \$50 per month,  
23 provided the average monthly fee does not exceed \$30 per debtor  
24 for all debtors counseled.

25 (Source: P.A. 90-545, eff. 1-1-98.)

1 (205 ILCS 665/12.1)

2 Sec. 12.1. All moneys received by the Department of  
3 Financial and Professional Regulation ~~Financial Institutions~~  
4 under this Act shall be deposited in the Financial Institutions  
5 Fund created under Section 6z-26 of the State Finance Act.

6 (Source: P.A. 88-13.)

7 (205 ILCS 665/13) (from Ch. 17, par. 5313)

8 Sec. 13. Prohibitions.

9 (1) No licensee shall advertise, in any manner whatsoever,  
10 any statement or representation with regard to the rates, terms  
11 or conditions of debt relief ~~management~~ service which is false,  
12 misleading, or deceptive, nor may any licensee misrepresent the  
13 timing of any settlement negotiations with a debtor's  
14 creditors.

15 (2) No licensee shall require as a part of the agreement  
16 between the licensee and any debtor, the purchase of any stock,  
17 insurance, commodity, service or other property or any interest  
18 therein.

19 (3) No licensee shall, directly or indirectly, accept  
20 payment or any other consideration, whether in cash or in kind,  
21 from any entity for referring applicants to that entity. The  
22 licensee shall not, directly or indirectly, make payments in  
23 any form, whether in cash or in kind, to any person,  
24 corporation, or other entity for referring applicants or

1 clients to the licensee.

2 (4) No licensee shall make any loans.

3 (5) No licensee shall issue credit cards or act as an agent  
4 in procuring customers for a credit card company or any  
5 financial institution.

6 (6) No licensee shall act as a loan broker.

7 (7) No licensee shall operate any other business at the  
8 licensed location without another business authorization from  
9 the Director, pursuant to Section 13.5.

10 (8) No licensee shall advise a debtor to stop making  
11 payments to a creditor or advise a debtor to stop communicating  
12 with creditors.

13 (9) No licensee shall imply, infer, or in any manner  
14 represent that:

15 (a) fees, interest, and other charges will not continue  
16 to accrue prior to the time debts are settled;

17 (b) wages or bank accounts are not subject to  
18 garnishment;

19 (c) creditors will not continue to contact the debtor;

20 (d) the debtor is not subject to legal action; and

21 (e) the debtor will not be subject to tax consequences  
22 for the portion of any debts forgiven.

23 (Source: P.A. 90-545, eff. 1-1-98.)

24 (205 ILCS 665/13.2 new)

25 Sec. 13.2. Accounting.

1       (a) Starting in the calendar month following the date on  
2 which the contract between licensee and debtor was signed, each  
3 licensee is required to mail to its debt relief client every  
4 calendar month an accounting statement. This statement shall  
5 contain the following information:

6           (1) dollar amount of money received from the debtor,  
7 for that calendar month and in total;

8           (2) dollar amount paid to creditors in that calendar  
9 month.

10       (b) In any event, a statement showing the total amount  
11 received and the total disbursements to each creditor shall be  
12 furnished by the licensee to any individual within 7 days after  
13 a request therefor by the said debtor.

14       (205 ILCS 665/13.3 new)

15       Sec. 13.3. Advertisement and solicitation of debt relief  
16 services.

17       (a) No licensee or lead generator may:

18           (1) make any false, deceptive, or misleading  
19 statements or omissions about the rates, terms, or  
20 conditions of an actual or proposed debt settlement  
21 services plan, or create the likelihood of consumer  
22 confusion or misunderstanding regarding its services;

23           (2) represent that the licensee is a nonprofit or  
24 not-for-profit or has similar status or characteristics if  
25 some or all of the debt relief services will be provided by

1 a for-profit company that is a controlling or affiliated  
2 party to the licensee;

3 (3) make any communication that gives the impression  
4 that the licensee is acting on behalf of a government  
5 agency; or

6 (4) represent, claim, imply, or infer that secured  
7 debts may be settled.

8 (b) In all print, electronic, and nonprint solicitations,  
9 including web sites, unsolicited email notifications, and  
10 radio or television advertising, a lead generator must  
11 prominently make the following verbatim disclosure: "This  
12 company does not actually provide any debt relief, debt  
13 settlement, debt consolidation, or other credit counseling  
14 services. We ONLY refer you to companies that want to provide  
15 some or all of those services."

16 (c) A lead generator may not, in any advertising or  
17 solicitation to debtors:

18 (1) represent that any service is guaranteed; or

19 (2) misrepresent the benefits of debt settlement  
20 or debt consolidation in comparison to credit  
21 counseling, debt management, or bankruptcy.

22 (205 ILCS 665/13.8 new)

23 Sec. 13.8. Annual report. On an annual basis, the Director  
24 shall post on the website of the Department of Financial and  
25 Professional Regulation a report detailing the following:

1       (1) the number of licensed debt relief agencies in the  
2       State of Illinois;

3       (2) the number of debt relief licenses suspended or revoked  
4       during the past calendar year, and the number of those  
5       disciplined licenses belonging to licensees providing debt  
6       settlement services, as defined in this Act; and

7       (3) the name, business address, license number, and summary  
8       of conduct leading to a suspension or a revocation of license.

9       The report shall be written in consumer-friendly language and  
10       posted in a conspicuous location on the website. The first  
11       annual report shall be published on the first January 31  
12       following the effective date of this amendatory Act of the 96th  
13       General Assembly, and shall be published on each following  
14       January 31 thereafter.

15           (205 ILCS 665/14) (from Ch. 17, par. 5314)

16           Sec. 14. Trust funds; requirements and restrictions.

17           (a) All funds received by a licensee or his agent from and  
18           for the purpose of paying bills, invoices, or accounts of a  
19           debtor shall constitute trust funds owned by and belonging to  
20           the debtor from whom they were received. All such funds  
21           received by a licensee shall be separated from the funds of the  
22           licensee not later than the end of the business day following  
23           receipt by the licensee. All such funds shall be kept separate  
24           and apart at all times from funds belonging to the licensee or  
25           any of its officers, employees or agents and may be used for no

1 purpose other than paying bills, invoices, or accounts of the  
2 debtor. All such trust funds received at the main or branch  
3 offices of a licensee shall be deposited in a bank in an  
4 account in the name of the licensee designated "trust account",  
5 or by some other appropriate name indicating that the funds are  
6 not the funds of the licensee or its officers, employees, or  
7 agents, on or before the close of the business day following  
8 receipt. Debtor funds may be held in trust for no longer than  
9 42 days.

10 (b) Prior to separation and deposit by the licensee, such  
11 funds may be used by the licensee only for the making of change  
12 or the cashing of checks in the normal course of its business.  
13 Such funds are not subject to attachment, lien, levy of  
14 execution, or sequestration by order of court except by a  
15 debtor for whom a licensee is acting as an agent in paying  
16 bills, invoices, or accounts.

17 (c) Each licensee shall make remittances within 30 days  
18 after initial receipt of funds, and thereafter remittances  
19 shall be made within 15 days of receipt, less fees and costs,  
20 ~~unless the reasonable payment of one or more of the debtor's~~  
21 ~~obligations requires that the funds be held for a longer period~~  
22 ~~so as to accumulate a sum certain.~~

23 (d) At least once every quarter, the licensee shall render  
24 an accounting to the debtor which shall itemize the total  
25 amount received from the debtor, the total amount paid each  
26 creditor, the amount of charges deducted, and any amount held

1 in reserve. A licensee shall, in addition thereto, provide such  
2 an accounting to a debtor within 7 days after written demand,  
3 but not more than 3 times per 6 month period.

4 (Source: P.A. 90-545, eff. 1-1-98.)

5 (205 ILCS 665/15.1) (from Ch. 17, par. 5316)

6 Sec. 15.1. Advisory Board; appointment. There is created a  
7 Board of Debt Relief Management Service ~~Service~~ Advisors composed of 5  
8 persons appointed by the Governor. The majority of members  
9 shall be active in a debt relief management ~~management~~ or consumer credit  
10 counseling service. Each Board member shall serve without  
11 compensation, but shall be reimbursed for necessary expenses.  
12 Initially, the Board shall consist of members appointed for  
13 terms beginning on July 1, 1965, and one member shall serve  
14 until July 1, 1966, 2 members shall serve until July 1, 1967,  
15 and 2 members shall serve until July 1, 1968, as designated by  
16 the Governor at the time of the initial appointments. As terms  
17 of appointment expire, successors shall be appointed for terms  
18 to expire on July 1, 3 years subsequent to the date of  
19 appointment. Each member of the board shall serve until his  
20 respective successor is appointed.

21 (Source: P.A. 89-400, eff. 8-20-95; 90-545, eff. 1-1-98.)

22 (205 ILCS 665/15.3) (from Ch. 17, par. 5318)

23 Sec. 15.3. Advisory Board; powers. The Board shall have the  
24 following powers:

1           1. To make recommendations to the Director concerning  
2 matters which he may refer to the Board for consideration;

3           2. To recommend on its own initiative policies and  
4 practices to the Director, the Governor and the General  
5 Assembly;

6           3. To make recommendations to the Director for the purpose  
7 of preventing unsound practices in the field of debt relief  
8 ~~management~~ service;

9           4. To foster the interest and cooperation of persons  
10 rendering debt relief ~~management~~ service in improvement of  
11 their services to the people of the State of Illinois.

12 (Source: P.A. 90-545, eff. 1-1-98.)

13           (205 ILCS 665/16) (from Ch. 17, par. 5319)

14           Sec. 16. Penalties.

15           (a) Any person who engages in the business of debt relief  
16 ~~management~~ service without a license as provided for in this  
17 Act shall be guilty of a Class 4 felony.

18           (b) Any contract of debt relief ~~management~~ service as  
19 defined in this Act, made by an unlicensed person, shall be  
20 null and void and of no legal effect.

21           (c) The Director may set by rule monetary penalties for  
22 violation of this Act.

23 (Source: P.A. 90-545, eff. 1-1-98.)

24           (205 ILCS 665/17) (from Ch. 17, par. 5320)

1           Sec. 17. Injunction. To engage in debt relief ~~management~~  
2 service, render financial service, or accept debtors' funds, as  
3 defined in this Act, without a valid license so to do, is  
4 hereby declared to be inimical to the public welfare and to  
5 constitute a public nuisance. The Director may, in the name of  
6 the people of the State of Illinois, through the Attorney  
7 General of the State of Illinois, file a complaint for an  
8 injunction in the circuit court to enjoin such person, from  
9 engaging in said business. Such injunction proceeding shall be  
10 in addition to, and not in lieu of, penalties and remedies  
11 otherwise in this Act provided.

12       (Source: P.A. 90-545, eff. 1-1-98.)

13           (205 ILCS 665/20.5)

14           Sec. 20.5. Receivership.

15           (a) If the Director determines that a licensee is insolvent  
16 or is violating this Act, he or she may appoint a receiver.  
17 Under the direction of the Director, the receiver shall, for  
18 the purpose of receivership, take possession of and title to  
19 the books, records, and assets of the licensee. The Director  
20 may require the receiver to provide security in an amount the  
21 Director deems proper. Upon appointment of the receiver, the  
22 Director shall have published, once each week for 4 consecutive  
23 weeks in a newspaper having a general circulation in the  
24 community, a notice informing all persons who have claims  
25 against the licensee to present them to the receiver. Within 10

1 days after the receiver takes possession, the licensee may  
2 apply to the Circuit Court of Sangamon County to enjoin further  
3 proceedings. The receiver may operate the business until the  
4 Director determines that possession should be restored to the  
5 licensee or that the business should be liquidated.

6 (b) If the Director determines that a business in  
7 receivership should be liquidated, he or she shall direct the  
8 Attorney General to file a complaint in the Circuit Court of  
9 the county in which the business is located, in the name of the  
10 People of the State of Illinois, for the orderly liquidation  
11 and dissolution of the business and for an injunction  
12 restraining the licensee and its officers and directors from  
13 continuing the operation of the business. Within 30 days after  
14 the day the Director determines that the business should be  
15 liquidated, the receiver shall file with the Director and with  
16 the clerk of the court that has charge of the liquidation a  
17 correct list of all creditors, as shown by the licensee's books  
18 and records, who have not presented their claims. The list  
19 shall state the amount of the claim after allowing all just  
20 credits, deductions, and set-offs as shown by the licensee's  
21 books. These claims shall be deemed proven unless some  
22 interested party files an objection within the time fixed by  
23 the Director or court that has charge of the liquidation.

24 (c) The General Assembly finds and declares that debt  
25 relief ~~management~~ services provide important and vital  
26 services to Illinois citizens. It is therefore declared to be

1 the policy of this State that customers who receive these  
2 services must be protected from interruptions of services. To  
3 carry out this policy and to insure that customers of a  
4 licensee are protected if it is determined that a business in  
5 receivership should be liquidated, the Director shall make a  
6 distribution of moneys collected by the receiver in the  
7 following order of priority:

8 (1) Allowed claims for the actual necessary expenses of  
9 the receivership of the business being liquidated,  
10 including:

11 (A) reasonable receiver's fees and receiver's  
12 attorney's fees approved by the Director;

13 (B) all expenses of any preliminary or other  
14 examinations into the condition of the receivership;

15 (C) all expenses incurred by the Director that are  
16 incident to possession and control of any property or  
17 records of the licensee's business; and

18 (D) reasonable expenses incurred by the Director  
19 as the result of business agreements or contractual  
20 arrangements necessary to insure that the services of  
21 the licensee are delivered to the community without  
22 interruption. These business agreements or contractual  
23 arrangements may include, but are not limited to,  
24 agreements made by the Director, or by the receiver  
25 with the approval of the Director, with banks, bonding  
26 companies, and other types of financial institutions.

1           (2) Allowed unsecured claims for wages or salaries,  
2           excluding vacation, severance, and sick leave pay earned by  
3           employees within 90 days before the appointment of a  
4           receiver.

5           (3) Allowed unsecured claims of any tax, and interest  
6           and penalty on the tax.

7           (4) Allowed unsecured claims, other than a kind  
8           specified in items (1), (2), and (3) of this subsection,  
9           filed with the Director within the time the Director fixes  
10          for filing claims.

11          (5) Allowed unsecured claims, other than a kind  
12          specified in items (1), (2), and (3) of this subsection,  
13          filed with the Director after the time fixed for filing  
14          claims by the Director.

15          (6) Allowed creditor claims asserted by an owner,  
16          member, or stockholder of the business in liquidation.

17          (7) After one year from the final dissolution of the  
18          licensee's business, all assets not used to satisfy allowed  
19          claims shall be distributed pro rata to the owner, owners,  
20          members, or stockholders of the business.

21          The Director shall pay all claims of equal priority  
22          according to the schedule established in this subsection and  
23          shall not pay claims of lower priority until all higher  
24          priority claims are satisfied. If insufficient assets are  
25          available to meet all claims of equal priority, those assets  
26          shall be distributed pro rata among those claims. All unclaimed

1 assets of a licensee and the licensee's business shall be  
2 deposited with the Director to be paid out when proper claims  
3 are presented to the Director.

4 (d) Upon the order of the circuit court of the county in  
5 which the business being liquidated is located, the receiver  
6 may sell or compound any bad or doubtful debt, and on like  
7 order may sell the personal property of the business on such  
8 terms as the court approves. The receiver shall succeed to  
9 whatever rights or remedies the unsecured creditors of the  
10 business may have against the owner or owners, operators,  
11 stockholders, directors, members, managers, or officers,  
12 arising out of their claims against the licensee's business,  
13 but nothing contained in this Section shall prevent those  
14 creditors from filing their claims in the liquidation  
15 proceeding. The receiver may enforce those rights or remedies  
16 in any court of competent jurisdiction.

17 (e) At the close of a receivership, the receiver shall turn  
18 over to the Director all books of account and ledgers of the  
19 business for preservation. The Director shall hold all records  
20 of receiverships received at any time for a period of 2 years  
21 after the close of the receivership. The records may be  
22 destroyed at the termination of the 2-year period. All expenses  
23 of the receivership including, but not limited to, reasonable  
24 receiver's and attorney's fees approved by the Director, all  
25 expenses of any preliminary or other examinations into the  
26 condition of the licensee's business or the receivership, and

1 all expenses incident to the possession and control of any  
2 property or records of the business incurred by the Director  
3 shall be paid out of the assets of the licensee's business.  
4 These expenses shall be paid before all other claims.

5 (f) Upon the filing of a complaint by the Attorney General  
6 for the orderly liquidation and dissolution of a licensee's  
7 business, as provided in this Act, all pending suits and  
8 actions upon unsecured claims against the business shall abate.  
9 Nothing contained in this Act, however, prevents these  
10 claimants from filing their claims in the liquidation  
11 proceeding. If a suit or an action is instituted or maintained  
12 by the receiver on any bond or policy of insurance issued  
13 pursuant to the requirements of this Act, the bonding or  
14 insurance company sued shall not have the right to interpose or  
15 maintain any counterclaim based upon subrogation, upon any  
16 express or implied agreement of, or right to, indemnity or  
17 exoneration, or upon any other express or implied agreement  
18 with, or right against, the licensee's business. Nothing  
19 contained in this Act prevents the bonding or insurance company  
20 from filing this type of claim in the liquidation proceeding.

21 (g) A licensee may not terminate its affairs and close up  
22 its business unless it has first deposited with the Director an  
23 amount of money equal to all of its debts, liabilities, and  
24 lawful demands against it including the costs and expenses of a  
25 proceeding under this Section, surrendered to the Director its  
26 license, and filed with the Director a statement of termination

1 signed by the licensee containing a pronouncement of intent to  
2 close up its business and liquidate its liabilities and  
3 containing a sworn list itemizing in full all of its debts,  
4 liabilities, and lawful demands against it. Corporate  
5 licensees must attach to, and make a part of the statement of  
6 termination, a copy of a resolution providing for the  
7 termination and closing up of the licensee's affairs, certified  
8 by the secretary of the licensee and duly adopted at a  
9 shareholders' meeting by the holders of at least two-thirds of  
10 the outstanding shares entitled to vote at the meeting. Upon  
11 the filing with the Director of a statement of termination, the  
12 Director shall cause notice of that action to be published once  
13 each week for 3 consecutive weeks in a public newspaper of  
14 general circulation published in the city or village where the  
15 business is located, and if no newspaper is published in that  
16 place, then in a public newspaper of general circulation  
17 nearest to that city or village. The publication shall give  
18 notice that the debts, liabilities, and lawful demands against  
19 the business will be redeemed by the Director upon demand in  
20 writing made by the owner thereof, at any time within 3 years  
21 after the date of first publication. After the expiration of  
22 the 3-year period, the Director shall return to the person or  
23 persons designated in the statement of termination to receive  
24 repayment, and in the proportion specified in that statement,  
25 any balance of money remaining in his or her possession after  
26 first deducting all unpaid costs and expenses incurred in

1 connection with a proceeding under this Section. The Director  
2 shall receive for his or her services, exclusive of costs and  
3 expenses, 2% of any amount up to \$5,000 and 1% of any amount in  
4 excess of \$5,000 deposited with him or her under this Section  
5 by any business. Nothing contained in this Section shall affect  
6 or impair the liability of any bonding or insurance company on  
7 any bond or insurance policy issued under this Act relating to  
8 the business.

9 (Source: P.A. 92-400, eff. 1-1-02.)

10 (205 ILCS 665/22) (from Ch. 17, par. 5325)

11 Sec. 22. Title of Act. This Act may be cited as the Debt  
12 Relief and Consumer Protection ~~Management Service~~ Act.

13 (Source: P.A. 90-545, eff. 1-1-98.)

14 Section 15. The Viatical Settlements Act is amended by  
15 changing Section 5 as follows:

16 (215 ILCS 158/5)

17 (Section scheduled to be repealed on July 1, 2010)

18 Sec. 5. Definitions. As used in this Act, the following  
19 definitions apply:

20 "Director" means the Director of Insurance.

21 "Person" means any natural or artificial entity including,  
22 but not limited to, individuals, partnerships, associations,  
23 trusts, or corporations.

1 "Viatical settlement agent" means an individual,  
2 partnership, corporation, or other entity who through  
3 appointment by at least one viatical settlement provider and  
4 for a fee, commission, or other valuable consideration, offers  
5 or advertises the availability of viatical settlements,  
6 introduces viators to viatical settlement providers, or offers  
7 or attempts to negotiate viatical settlements between a viator  
8 and one or more viatical settlement providers. "Viatical  
9 settlement agent" does not include an attorney licensed to  
10 practice law, a public accountant as defined in the Illinois  
11 Public Accounting Act, or a person licensed under the Debt  
12 Relief and Consumer Protection ~~Management Service~~ Act retained  
13 to represent the viator whose compensation is not paid by the  
14 viatical settlement provider.

15 "Viatical settlement contract" means a written agreement  
16 entered into between a viatical settlement provider and a  
17 person who owns a life insurance policy or who owns or is  
18 covered under a group policy, insuring the life of a person who  
19 has a catastrophic or life threatening illness or condition.  
20 The agreement shall establish the terms under which the  
21 viatical settlement provider will pay compensation or anything  
22 of value, which compensation or value is less than the expected  
23 death benefit of the insurance policy or certificate, in return  
24 for the policyowner's assignment, transfer, sale, devise, or  
25 bequest of the death benefit or ownership of the insurance  
26 policy or certificate to the viatical settlement provider.

1 "Viatical settlement provider" means an individual,  
2 partnership, corporation, or other entity that enters into an  
3 agreement with a person who owns a life insurance policy, or  
4 who owns or is covered under a group policy, insuring the life  
5 of a person who has a catastrophic or life threatening illness  
6 or condition, under the terms of which the viatical settlement  
7 provider pays compensation or anything of value, which  
8 compensation or value is less than the expected death benefit  
9 of the insurance policy or certificate, in return for the  
10 policyowner's assignment, transfer, sale, devise, or bequest  
11 of the death benefit or ownership of the insurance policy or  
12 certificate to the viatical settlement provider. "Viatical  
13 settlement provider" does not include:

14 (1) a licensed insurance company, bank, savings bank,  
15 savings and loan association, credit union, commercial  
16 finance company or other licensed lending institution,  
17 investment company registered under the Investment Company  
18 Act of 1940, pension plan qualified under Section 401(a) of  
19 the Internal Revenue Code of 1986, or trust funding such a  
20 pension plan that takes an assignment of a life insurance  
21 policy only as collateral for a loan;

22 (2) sophisticated investors meeting the standards of  
23 subsection H of Section 4 of the Illinois Securities Law of  
24 1953 who invest in or lend to a licensed viatical  
25 settlement provider or other persons who so invest pursuant  
26 to a registered security offering; or

1           (3) the issuer of a life insurance policy providing  
2           accelerated benefits under the Illinois Insurance Code.

3           "Viaticated policy" means a life insurance policy held by a  
4           viatical settlement provider, directly or indirectly, through  
5           a viatical settlement contract.

6           "Viator" means a person who owns a life insurance policy,  
7           or who owns or is covered under a group policy, insuring the  
8           life of a person with a catastrophic or life threatening  
9           illness or condition who enters into an agreement under which  
10          the viatical settlement provider will pay compensation or  
11          anything of value, which compensation or value is less than the  
12          expected death benefit of the insurance policy or certificate,  
13          in return for the viator's assignment, transfer, sale, devise,  
14          or bequest of the death benefit or ownership of the insurance  
15          policy or certificate to the viatical settlement provider.

16          (Source: P.A. 89-484, eff. 6-21-96; 90-545, eff. 1-1-98.  
17          Repealed by P.A. 96-736, eff. 7-1-10.)

18          Section 20. The General Not For Profit Corporation Act of  
19          1986 is amended by changing Section 103.05 as follows:

20                 (805 ILCS 105/103.05) (from Ch. 32, par. 103.05)

21                 Sec. 103.05. Purposes and authority of corporations;  
22                 particular purposes; exemptions.

23                 (a) Not-for-profit corporations may be organized under  
24                 this Act for any one or more of the following or similar

1 purposes:

2 (1) Charitable.

3 (2) Benevolent.

4 (3) Eleemosynary.

5 (4) Educational.

6 (5) Civic.

7 (6) Patriotic.

8 (7) Political.

9 (8) Religious.

10 (9) Social.

11 (10) Literary.

12 (11) Athletic.

13 (12) Scientific.

14 (13) Research.

15 (14) Agricultural.

16 (15) Horticultural.

17 (16) Soil improvement.

18 (17) Crop improvement.

19 (18) Livestock or poultry improvement.

20 (19) Professional, commercial, industrial, or trade  
21 association.

22 (20) Promoting the development, establishment, or  
23 expansion of industries.

24 (21) Electrification on a cooperative basis.

25 (22) Telephone service on a mutual or cooperative  
26 basis.

1           (23) Ownership and operation of water supply  
2 facilities for drinking and general domestic use on a  
3 mutual or cooperative basis.

4           (24) Ownership or administration of residential  
5 property on a cooperative basis.

6           (25) Administration and operation of property owned on  
7 a condominium basis or by a homeowner association.

8           (26) Administration and operation of an organization  
9 on a cooperative basis producing or furnishing goods,  
10 services, or facilities primarily for the benefit of its  
11 members who are consumers of those goods, services, or  
12 facilities.

13           (27) Operation of a community mental health board or  
14 center organized pursuant to the Community Mental Health  
15 Act for the purpose of providing direct patient services.

16           (28) Provision of debt management services as  
17 authorized by the Debt Relief and Consumer Protection  
18 ~~Management Service~~ Act.

19           (29) Promotion, operation, and administration of a  
20 ridesharing arrangement as defined in Section 1-176.1 of  
21 the Illinois Vehicle Code.

22           (30) The administration and operation of an  
23 organization for the purpose of assisting low-income  
24 consumers in the acquisition of utility and telephone  
25 services.

26           (31) Any purpose permitted to be exempt from taxation

1 under Sections 501(c) or 501(d) of the United States  
2 Internal Revenue Code, as now in or hereafter amended.

3 (32) Any purpose that would qualify for tax-deductible  
4 gifts under the Section 170(c) of the United States  
5 Internal Revenue Code, as now or hereafter amended. Any  
6 such purpose is deemed to be charitable under subsection  
7 (a) (1) of this Section.

8 (33) Furnishing of natural gas on a cooperative basis.

9 (b) A corporation may be organized hereunder to serve in an  
10 area that adjoins or borders (except for any intervening  
11 natural watercourse) an area located in an adjoining state  
12 intended to be similarly served, and the corporation may join  
13 any corporation created by the adjoining state having an  
14 identical purpose and organized as a not-for-profit  
15 corporation. Whenever any corporation organized under this Act  
16 so joins with a foreign corporation having an identical  
17 purpose, the corporation shall be permitted to do business in  
18 Illinois as one corporation; provided (1) that the name, bylaw  
19 provisions, officers, and directors of each corporation are  
20 identical, (2) that the foreign corporation complies with the  
21 provisions of this Act relating to the admission of foreign  
22 corporation, and (3) that the Illinois corporation files a  
23 statement with the Secretary of State indicating that it has  
24 joined with a foreign corporation setting forth the name  
25 thereof and the state of its incorporation.

26 (Source: P.A. 94-738, eff. 5-4-06.)

1           Section 99. Effective date. This Act takes effect upon  
2           becoming law.

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